

## *Brady v. Maryland, 373 U.S. 83 (1963)*

**1**

The State **MUST** turn over all evidence in its possession or control that is **FAVORABLE** to the accused.

**2**

The State **MUST** turn over all evidence in its possession or control that tends to **NEGATE** the guilt of the accused.

**3**

The State **MUST** turn over all impeachment evidence. *Giglio v. U.S., 405 U.S. 150 (1972)*.

## Establishing a Brady Violation

The defense must prove:

- 1. The State possessed evidence favorable to the defendant, including impeachment evidence**
- 2. The defendant could not obtain the evidence himself through the exercise of reasonable due diligence**
- 3. The prosecution suppressed the favorable evidence**
- 4. The evidence was material**



Caselaw:

Strickler v. Greene, 527 U.S. 263 (1999); Jones v. State, 709 So.2d 512 (Fla. 1998)

## Materiality Requirement

- “The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *U.S. v. Bagley*, 473 U.S. 667 (1985)



## DEFENSE BURDEN

Mere speculation by defense  
that information **MAY** be  
exculpatory is not enough to  
trigger state's obligation to  
disclose.

Caselaw:

*U.S. V. Quinn*, 123 F.3d 1415 (11th Cir. 1997) (Mere speculation that a government file may contain Brady material not enough)

*U.S. v. Navarro*, 737 F.2d 625 (7th Cir. 1984) (Speculation that INS file may contain cooperation agreement not enough)

*Downs v. State*, 740 So.2d 506 (Fla. 1999) (Mere suspicion of existence of evidence not enough)